

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**TRES M, L.L.C.**

**Butler County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2010-AFO-42

TO: Tim McCandless, Registered Agent  
Tres M, L.L.C.  
3025 Greene Road  
Greene, Iowa 50636

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Tres M, L.L.C (Tres M) for the purpose of resolving violations resulting from a manure discharge from the land application of manure. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:   Relating to legal requirements:**

Carl Berg, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issues pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Tres M is a commercial manure applicator service that is owned and operated by Tim McCandless.

2. On November 27, 2009, at 10:41 am, Carl Berg, DNR Field Office 2 environmental specialist, received a page on the DNR Emergency Response Hotline. Mr. McCandless called to report a release of less than 500 gallons of manure when a pinhole was discovered in the umbilical hose during manure application from the Kramer Finish Farm located in Section 8, Shell Rock Township, Butler County, Iowa. The discovery was made at 7:00 am. Mr. McCandless stated that the manure application had started at approximately 3:00 am that morning. Mr. McCandless stated the manure was completely contained in the road ditch between two driveways with no culverts or intakes in the ditch. He stated the company had already begun scraping the ditch of contaminated soil and that there was no sign of any intakes. Mr. Berg asked if Mr. McCandless was certain that all the manure was contained and Mr. McCandless stated that all the manure that had spilled was contained. Mr. Berg told Mr. McCandless if the manure was contained and was only 500 gallons, that he would not visit the site. Mr. Berg told Mr. McCandless that he was to ensure the manure does not leave the site or enter a tile intake. Mr. Berg told Mr. McCandless that he was liable for any further contamination and discharges to a water of the state.

3. On November 28, 2009, Mr. Berg visited the area of the Tres M discharge to evaluate the cleanup of the ditch near the Kramer Finish Farm. When Mr. Berg arrived, he observed manure pooled in the north road ditch and did not observe any tile intakes or culverts in the north road ditch. Mr. Berg then observed a flow path in the ditch on the other side of the driveway and manure was in the ditch. Mr. Berg followed the ditch for approximately 200 yards and found a tile intake that was draining a culvert from across the road as well as the manure flowing from the manure spill area. The tile intake had foam at its entrance and smelled of manure. The field test indicated highly elevated ammonia levels. Mr. Berg proceeded to the facility to inform the facility that the spill had now reached a tile intake in the ditch. The facility personnel stated that Mr. McCandless would be contacted to correct the problem. Mr. Berg then collected laboratory samples from the tile intake. The laboratory samples indicated an ammonia concentration of 20 mg/L. The sample was very turbid, brown in color, and had a manure odor. Mr. Berg then conducted a field test on the culvert that was running clear water to the intake and the ammonia level was less than 0.5 mg/L. The laboratory sample of the water in the culvert indicated an ammonia concentration of less than 0.05 mg/L. The sample was clear with no odor. Mr. McCandless arrived on location and he spoke with Mr. Berg about how the manure was entering the intake. Mr. McCandless stated that the manure was not beyond the driveway when the spill was reported. Mr. McCandless and the facility owner began removing manure from the ditch.

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4. Mr. Berg then followed the waterway to the west of the section where two tiles day lighted and flowed in the Terrace road ditch. The corner of the field north of the area where the tile day lighted was saturated with manure from the application. There were also several pools of manure in the field. This is the field that Tres M was land applying manure to in the early morning hours of November 27. Mr. Berg noted a residence located immediately across the road, the residence was within the 750 feet of separation distance required for surface application of liquid manure. Mr. Berg observed the west tile outlet in the field and observed manure in the tile outlet. The field test for the west tile outlet indicated highly elevated levels of ammonia. Mr. Berg field tested the east tile outlet and the field test indicated ammonia levels less than 0.5 mg/L with no manure odor. At the field entrance, Mr. Berg noted manure traveling in the east ditch of Terrace Avenue.

5. Mr. Berg continued to McClure Creek. From the bridge crossing, Mr. Berg observed the ditch discharge into the creek. The discharge was turbid as it entered the creek. The field test near the discharge indicated highly elevated levels of ammonia. The field test from upstream of the discharge indicated ammonia levels of approximately 0.8 mg/L and the laboratory sample indicated an ammonia concentration of <0.05 mg/L. Mr. Berg went downstream of the discharge about ten yards to collect more samples. The sample was clear with no odor. The field test indicated ammonia levels of approximately 1.8 mg/L and the laboratory sample indicated an ammonia concentration of 1.3 mg/L. Mr. Berg continued downstream to Highway C45. The field test indicated ammonia levels of approximately 0.6 mg/L. Mr. Berg did not see any evidence that the discharge was causing a water quality problem at this location. He did not observe any dead or live fish at this location.

6. On November 30, 2009, Mr. Berg returned to the area and observed McClure Creek. He did not observe any visual impact to the stream from the bridge crossing. The field test of the ditch discharge continued to be greater than 3 mg/L. There continued to be a slight manure odor. Mr. Berg then went to the spill area at Kramer Finish Farm. An applicator was working to remove the manure from the ditch. The applicator indicated that the south ditch had approximately six inches of manure and another foot of foam in it from the initial spill. The applicator did not know how much of the manure entered the north ditch where the tile outlet was. However he speculated that after the manure was pumped out of the south ditch that it drained from the field back into the north ditch and into the tile intake. Mr. Berg checked the area where the tile daylighted. The field test indicated ammonia levels of 1.2 mg/L. Mr. Berg spoke to a representative of Tres M and told the representative to remove all the manure and contaminated soil from the north ditch and remove all the manure and contaminated soil from the north and south pool at the field entrance on Terrace Avenue. The representative stated that Tres M would get started and hopefully be done by the following morning.

7. On December 2, 2009, Mr. Berg returned to Kramer Finish Farm. He observed manure in the north ditch, with only vegetation being removed. In the

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south ditch, Mr. Berg observed manure seeping into the ditch and he noted a small pool of manure. Mr. Berg went to McClure Creek and conducted a field test at the ditch discharge. The field test indicated ammonia levels above 3 mg/L. The company representative indicated that the field entrance manure pool had been pumped six times. However the field test from this location indicated ammonia levels above 3 mg/L. Mr. Berg spoke to the company representative and the representative told him Tres M would have the manure cleaned up by the end of the week. On December 4, 2009, a company representative contacted Mr. Berg and indicated that the manure had been removed and that in some areas six to twelve inches of soil had been removed and the manure pumped out.

8. On December 7, 2009, Mr. Berg returned to Kramer Finish Farm. There had been a recent snowfall that made the cleanup evaluation difficult. However, it appeared that the majority of the contaminated soil had been removed from the ditch.

9. On December 18, 2009, Tres M was issued a Notice of Violation letter for the violations discovered by DNR Field Office 2. The violations included discharge to a water of the state without a permit, failure to maintain the minimum level of manure control for a confinement building, and failure to meet the separation distance. The letter informed Tres M the matter was being referred for an enforcement action.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During Mr. Berg's investigation it was determined that manure from Tres M's manure application was discharging into McClure Creek. The above-mentioned facts indicate violations of these provisions.

2. 567 IAC 65.2(3) describes the minimum level of manure control for confinement feeding operations as the retention of all manure produced in the confinement enclosure between periods of waste disposal. 567 IAC 65.2(3) further states that in no case shall manure from the confinement feeding be discharged into a water of the state. During Mr. Berg's investigation it was determined that during manure application by Tres M that an umbilical hose was punctured causing manure to be released and during the remediation process manure was pumped to a field in a manner that caused a discharge to a ditch with a tile intake and ultimately to McClure Creek. The above-facts disclose violations of this provision.

3. 567 IAC 65.3(3) stated that the separation distance for land application of manure from a confinement feeding operation to a residence is 750 feet. This separation distance does not apply if the liquid manure is injected into the soil or incorporated within the soil not later than 24 hours of the application. Mr. Berg

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observed pooled manure for several days in the field where Tres M had pumped the manure. The pooled manure was within 750 feet of a residence. The above-facts disclose a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Tres M agrees to do the following:

- 1: Tres M shall pay an administrative penalty of \$4,000.00 in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

\$500.00 due June 15, 2010 (**paid**)

\$500.00 due August 15, 2010

\$1,000.00 due December 15, 2010

\$1,000.00 due June 15, 2011

\$1,000 due December 15, 2011

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Tres M has gained an economic benefit from its failure to properly contain all the manure. Tres M was able to save time and money by not properly containing the manure. 567 IAC 10.2(1) states, “reasonable estimates of economic benefit should be made where clear data are not available.” A reasonable estimate is that Tres M has gained an economic benefit of at least \$500.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations

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administratively at this time, as the most equitable and efficient means of resolving the matter. Manure run-off from Tres M's application reached a tile intake and McClure Creek. Tres M failed to properly mitigate the spill and this threatened the water quality of the creek. The degradation of the creek would have continued if DNR Field Office 2 had not been investigating the spill. Additionally, DNR Field Office 2 has expended a large amount of time in investigating and completing the follow up inspections. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Tres M has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Tres M failed to properly assess the original spill and this prevented the DNR from initially responding to and possibly preventing the discharge. Once the investigation began Tres M failed to immediately clean up the area as required. Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Tres M. For that reason Tres M waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 25 day of  
August, 2010

  
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TRES M, L.L.C.

Dated this 2nd day of  
August, 2010.

Applicator #6206 CMSR; Kelli Book, Carl Berg (Field Office 2), EPA, VIII.D.1.a and VIII.D.2.b